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9
10 IN THE UNITED STATES DISTRICT COURT
11
12 EASTERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
14 v.
15 HANNAH CHEYANNE LAFOND,
16 Defendant.

CASE NO. 1:23-MJ-00048; 1:23-CR-00084 JLT
[AMENDED] STIPULATION REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; FINDINGS AND ORDER
DATE: May 8, 2023
TIME: 2:00 p.m.

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18 This case is set for a preliminary hearing and status conference on supervised release violation
19 on May 8, 2023. The parties agree and stipulate to continue the preliminary hearing and status
20 conference on supervised release violation until May 30, 2023. Defense counsel is engaged in
21 discussions with the government regarding possible further investigation pre-indictment. The parties
22 need additional time to conclude discussions and any follow-on investigation.

23 On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the
24 courthouse in June 2021, recognized the continued public health emergency, continued to authorize
25 video or teleconference court appearances in various cases, and noted the court's continued ability under
26 the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and
27 other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652,
28 which "authorized the use of videoconference and teleconference technology in certain criminal

1 proceedings under the in the Eastern District of California.” This and previous General Orders highlight
 2 and were entered to address public health concerns related to COVID-19. Pursuant to F.R.Cr.P. 5.1(c)
 3 and (d), a preliminary hearing must be held “no later than 14 days after initial appearance if the
 4 defendant is in custody,” unless the defendant consents and there is a “showing of good cause”, or if the
 5 defendant does not consent and there is a “showing that extraordinary circumstances exist and justice
 6 requires the delay.” Here, the defendant consents and there is good cause.

7 Although the General Orders address the district-wide health concern, the Supreme Court has
 8 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 9 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 10 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 11 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 12 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 13 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 14 or in writing”).

15 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 16 and inexcusable—General Orders 611, 612, 617, 631, 652 and 662 (among others) require specific
 17 supplementation. Ends-of-justice continuances are excludable only if “the judge granted such
 18 continuance on the basis of his findings that the ends of justice served by taking such action outweigh
 19 the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A).
 20 Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either
 21 orally or in writing, its reason or finding that the ends of justice served by the granting of such
 22 continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

23 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 24 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 25 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 26 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 27 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 28 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*

¹ *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

10 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
11 through defendant's counsel of record, hereby stipulate as follows:

12 1. By previous order, this matter was set for preliminary hearing and status conference on
13 supervised release violation on May 8, 2023.

14 2. By this stipulation, defendant now moves to continue the preliminary hearing and status
15 conference on supervised release violation until **May 30, 2023, at 2:00 p.m.** and to exclude time
16 between May 8, 2023, and May 30, 2023, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

18 a) The parties are discussing and conducting further investigation into pre-
19 indictment matters.

20 b) Counsel for defendant desires additional time to consult with her client, conduct
21 further investigation, and discuss charges with the government.

22 c) Counsel for defendant believes that failure to grant the above-requested
23 continuance would deny him the reasonable time necessary for effective preparation, taking into
24 account the exercise of due diligence.

25 d) The government does not object to the continuance.

26 e) Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later
27 than 14 days after initial appearance if the defendant is in custody,” unless the defendant
28 consents and there is a “showing of good cause”. Here, the defendant consents and there is good

1 cause as set forth herein.

2 f) Based on the above-stated findings, the ends of justice served by continuing the
3 case as requested outweigh the interest of the public and the defendant in an indictment or trial
4 within the original dates prescribed by the Speedy Trial Act.

5 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
6 et seq., within which an indictment must be filed and within which a trial must commence, the
7 time period of May 8, 2023 to May 30, 2023, inclusive, is deemed excludable pursuant to 18
8 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by
9 the Court at defendant's request on the basis of the Court's finding that the ends of justice served
10 by taking such action outweigh the best interest of the public and the defendant in a speedy
11 indictment/trial.

12 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
13 Speedy Trial Act dictate that additional time periods are excludable from the period within which an
14 indictment must be filed and a trial must commence.

15 IT IS SO STIPULATED.

16 Dated: May 3, 2023

PHILLIP A. TALBERT
United States Attorney

17 /s/ KIMBERLY A. SANCHEZ
18 KIMBERLY A. SANCHEZ
19 Assistant United States Attorney

20 Dated: May 3, 2023

21 /s/ ERIN SNIDER
22 ERIN SNIDER
23 Counsel for Defendant
24 CHRISTIAN CLAUSTRO

FINDINGS AND ORDER

Having reviewed the parties Stipulation and proposed findings, the Court finds the following:

- a) The parties are discussing and conducting further investigation into pre-indictment matters, and need additional time to conclude that process.
 - b) Counsel for defendant desires additional time to consult with her client, conduct further investigation, and discuss charges with the government.
 - c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.
 - d) The government does not object to the continuance.
 - e) Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later than 14 days after initial appearance if the defendant is in custody,” unless the defendant consents and there is a “showing of good cause”. Here, the defendant consents and there is good cause as set forth herein.
 - f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in an indictment or trial within the original dates prescribed by the Speedy Trial Act.
 - g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which an indictment must be filed and within which a trial must commence, the time period of May 8, 2023 to May 30, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant’s request on the basis of the Court’s finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy indictment/trial.

IT IS HEREBY ORDERED that the preliminary hearing and status conference on supervised release violation scheduled for May 8, 2023 at 2:00 p.m. is continued to May 30, 2023 at 2:00 p.m. before the Duty Magistrate Judge. IT IS FURTHER ORDERED that the time between May 8, 2023 and May 30, 2023 is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it

1 results from a continuance granted by the Court at defendant's request on the basis of the Court's
2 finding that the ends of justice served by taking such action outweigh the best interest of the public and
3 the defendant in a speedy indictment/trial.

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5 IT IS SO ORDERED.
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Dated: May 3, 2023

/s/ Eric P. Groj

7 UNITED STATES MAGISTRATE JUDGE
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